

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:

FIRSTENERGY SOLUTIONS, CORP., *et al.*,¹

Debtors

Chapter 11

Case No. 18-50757
(Jointly Administered)

Hon. Judge Alan M. Koschik

**THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S
NOTICE OF APPEAL AND STATEMENT OF ELECTION**

NOTICE IS HEREBY GIVEN that the Office of the Ohio Consumers' Counsel (the "OCC"), on behalf of and for protection of Ohio residential electric consumers, appeals to the United States Court of Appeals for the Sixth Circuit, under 28 U.S.C. § 158(d)(2)(A), the Bankruptcy Court's *Order* granting FirstEnergy Solutions' ("FES") request to reject its OVEC Agreement (which includes FES rejecting its obligation to pay the costs of two 1950's coal power plants).² FES's rejection of the OVEC Agreement could result in a couple million Ohioans paying many millions of dollars in subsidies to bailout FES and the coal plants.

The grounds for appeal are that the Bankruptcy Court erred in determining that (i) it has exclusive jurisdiction to consider (and grant) FES's request to reject its OVEC Agreement and FES's obligations to pay the costs of the OVEC power plants and (ii) the Federal Energy

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: FE Aircraft Leasing Corp. (9245), case no. 18-50759; FirstEnergy Generation, LLC (0561), case no. 18-50762; FirstEnergy Generation Mansfield Unit 1 Corp. (5914), case no. 18-50763; FirstEnergy Nuclear Generation, LLC (6394), case no. 18-50760; FirstEnergy Nuclear Operating Company (1483), case no. 18-50761; FirstEnergy Solutions Corp. (0186); and Norton Energy Storage L.L.C. (6928), case no. 18-50764. The Debtors' address is: 341 White Pond Dr., Akron, OH 44320.

² This appeal is of the Court's Order of August 9, 2018, (*I*) *Authorizing the Debtors to Reject a Certain Multi-Party Intercompany Power Purchase Agreement With the Ohio Valley Electric Corporation ("OVEC")* and (*II*) *Granting Certain Related Relief* [Docket No. 1118] (the "Rejection Order"). The OCC joins appellants Ohio Valley Electric Corporation ("OVEC"), which filed its Notice of Appeal and Statement of Election on August 9, 2018 [Docket No. 1121], and Duke Energy Ohio, Inc. ("Duke Ohio"), which filed its Notice of Appeal and Statement of Election on August 14, 2018 [Docket No. 1143].

Regulatory Commission lacks concurrent jurisdiction to consider whether FES should be allowed to shed its obligation to pay the costs of the OVEC power plants.

The OCC also objected to the Bankruptcy Court adopting FES's proposal to use the business judgment standard under 11 U.S.C. § 365, instead of a standard that considers the public interest, in determining whether FES should be allowed to reject its obligations to pay the costs of the OVEC power plants. The Bankruptcy Court rejected the OCC's recommendation to use a public interest standard, in the Standards Order (Docket No. 958). Although the OCC is not appealing the standards issue in the Rejection Order the OCC does not waive its right in any future bankruptcy case to argue that 11 U.S.C. § 365 requires consideration of the public interest in the assumption or rejection of contracts.

Under 28 U.S.C. § 158(c)(1), the OCC elects to have this appeal heard by the United States District Court for the Northern District of Ohio (the "District Court") rather than by the Bankruptcy Appellate Panel for the Sixth Circuit (the "BAP").³

The parties to the order appealed and the names and addresses of their respective attorneys are as follows:

Party	Attorneys
APPELLANT Office of the Ohio Consumers' Counsel	CARPENTER LIPPS & LELAND LLP David A. Beck Candice L. Kline 280 North High Street, Suite 1300 Columbus, Ohio 43215
APPELLANT Ohio Valley Electric Corporation	DETTELBACH, SICHERMAN & BAUMGART LLC Richard A. Baumgart 55 Public Square, 21st Floor

³ The OCC has contemporaneously filed a Joinder of Office of the Ohio Consumers' Counsel In Ohio Valley Electric Corporation's Motion To Certify Rejection Order for Direct Appeal to the United States Court of Appeals for the Sixth Circuit (the "Joinder Motion") wherein the OCC joins the requests of OVEC and Duke Ohio for certification for direct appeal to the United States Court of Appeals for the Sixth Circuit. If a direct appeal is not certified by this Court or permission to appeal is subsequently denied by the Sixth Circuit, the OCC elects to have the appeal heard by the District Court as opposed to the BAP.

	<p>Cleveland, Ohio 44113</p> <p>KIRKLAND & ELLIS LLP KIRKLAND & ELLIS INTERNATIONAL LLP Marc Kieselstein, P.C. David R. Seligman, P.C. 300 North LaSalle Chicago, IL 60654</p> <p>KIRKLAND & ELLIS LLP KIRKLAND & ELLIS INTERNATIONAL LLP Mark McKane, P.C. Michael P. Esser Kevin Chang 555 California Street San Francisco, California 94104</p> <p>KIRKLAND & ELLIS LLP KIRKLAND & ELLIS INTERNATIONAL LLP Erin E. Murphy Subash Iyer 655 Fifteenth Street, N.W. Washington, District of Columbia 20005</p> <p>KIRKLAND & ELLIS LLP KIRKLAND & ELLIS INTERNATIONAL LLP Matthew Fagen 601 Lexington Avenue New York, New York 10022</p>
--	---

Party	Attorneys
<p>APPELLANT Duke Energy Ohio, Inc.</p>	<p>McGUIREWOODS LLP Aaron G. McCollough 77 West Wacker Drive Suite 4100 Chicago, IL 60601-1818</p> <p>McGUIREWOODS LLP John H. Thompson 2001 K Street N.W. Suite 400 Washington, DC 20006</p>
<p>APPELLEE FirstEnergy Solutions Corp., First Energy</p>	<p>BROUSE MCDOWELL LPA Marc B. Merklin John C. Fairweather</p>

Generation, LLC, as debtors and debtors-in-possession	<p>Lisa S. DelGrosso Kate M. Bradley 388 South Main Street, Suite 500 Akron, OH 44311</p> <p>AKIN GUMP STRAUSS HAUER & FELD LLP Ira Dizengoff David Zensky Lisa Beckerman Brian Carney Brad Kahn One Bryant Park New York, New York 10036</p> <p>AKIN GUMP STRAUSS HAUER & FELD LLP Scott Alberino David Applebaum Todd Brecher Kate Doorley 1333 New Hampshire Avenue, N.W. Washington, D.C. 20036</p>
---	---

Dated: August 23, 2018
Columbus, Ohio

Respectfully submitted,

s/ David A. Beck

David A. Beck (0072868)
Candice L. Kline (admitted to the bar of the
Northern District of Ohio, IL # 6296954)
CARPENTER LIPPS & LELAND LLP
280 North High Street, Suite 1300
Columbus, Ohio 43215
Telephone: (614) 365-4100
Facsimile: (614) 365-9145
E-mail: beck@carpenterlipps.com
kline@carpenterlipps.com

*SPECIAL OUTSIDE COUNSEL TO THE
OFFICE OF THE OHIO CONSUMERS'
COUNSEL*

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was electronically filed on August 23, 2018 and served through the Court's electronic filing system and on the General Service List via email based on the listing posted on Prime Clerk's website as of the filing of this notice.

s/ David A. Beck

One of the Attorneys for the Special Outside
Counsel for the Office of the Ohio Consumers'
Counsel